

Interfaith Community Organization

An Affiliate of the Industrial Areas Foundation

601 Jackson St. #2, Hoboken NJ 07030

201-705-7988

May 4, 2009

Office of Legal Affairs
Attention: Rulemaking Petitions
Department of Environmental Protection
P.O. Box 402
Trenton, New Jersey 08625-0402

Mark N. Mauriello, Commissioner
New Jersey Department of Environmental Protection
401 East State Street
P.O. Box 402
Trenton New Jersey 08625

Re: Petition For Rulemaking pursuant to N.J.A.C. 7:1D-1.1 by Interfaith Community Organization (ICO), GRACO Community Organization, and Natural Resources Defense Council (NRDC) to amend N.J.A.C. 7:26D, Remediation Standards, to include a non-residential soil remediation standard for hexavalent chromium protective of human health, based on the results of the National Toxicology Program study.

Dear Commissioner Mauriello:

Large areas of densely populated sections of New Jersey suffer from a legacy of large-scale chromium contamination. Despite this, the New Jersey Department of Environmental Protection (NJDEP or the Department) failed to include human health-based chromium remediation standards in its Remediation Standards (N.J.A.C. 7:26D) adopted in June 2008. The Interfaith Community Organization has repeatedly urged the Department to adopt chromium soil remediation standards based on the mountain of evidence of the acute and chronic toxicity of chromium. Hexavalent chromium has been a known Class A human carcinogen for decades. It has also been a regulated groundwater quality parameter and safe drinking water parameter for decades. In addition to the decades-old records on the toxicology of hexavalent chromium, the National Toxicology Program (NTP) has recently confirmed hexavalent chromium as a carcinogen via the ingestion route. On adoption of N.J.A.C. 7:26D, NJDEP provided the following response to comments that pointed out the absence of chromium soil remediation standards:

RESPONSE to COMMENTS 220 through 223: The Department has not included soil remediation standards for trivalent or hexavalent chromium as part of these rules because the Department's evaluation of chromium is

on-going. The Department is awaiting the official release of the complete results of the National Toxicology Program study evaluating hexavalent chromium as an oral carcinogen. When this report is released, the Department will review the report and will make a decision with regard to setting a remediation standard for chromium. Until such time, the Department will continue to develop site-specific soil remediation standards for chromium.

New Jersey Register, June 2, 2008 - 40 NJR 3237.

NJDEP's Division of Science and Research has completed its reviews of the NTP findings and finalized a risk assessment that has produced a recommended residential human health-based soil remediation standard for hexavalent chromium of 1 mg/kg. This risk assessment has been developed and peer reviewed in conjunction with the U.S. Environmental Protection Agency (USEPA) and the U.S. Public Health Service. See attached Memorandum From Eileen Murphy, Director of NJDEP's Division of Science, Research & Technology to NJDEP Commissioner Mark Mauriello, dated April 8, 2009. See also attached report entitled "Derivation of Ingestion-Based Soil Remediation Criteria for Cr⁺⁶ Based on the NTP Chronic Bioassay Data for Sodium Dichromate Dihydrate," Prepared by Alan Stern, Dr.P.H., DABT, Division of Science, Research and Technology, New Jersey Department of Environmental Protection," dated April 8, 2009 (hereinafter "Stern Report"). By separate petition, ICO, GRACO, and NRDC have petitioned NJDEP to amend N.J.A.C. 7:26D to adopt a residential soil remediation standard of 1 mg/kg.

Applying the human cancer slope factor, estimated to be $0.5 \text{ (mg/kg/day)}^{-1}$, from the Stern Report to equation 3 in N.J.A.C. 7:26D, Appendix 2 yields a non-residential soil standard for hexavalent chromium of 6 mg/kg. **ICO, GRACO, and NRDC hereby petition NJDEP to adopt a non-residential soil remediation standard of 6 mg/kg, as set forth in more detail below.**

The following information is submitted in compliance with N.J.A.C. 7:1D-1.1 in support of this petition.

1. The full name and address of the petitioners:

Interfaith Community Organization, Inc. (ICO), 601 Jackson Street #2, Hoboken, NJ 07030.

GRACO Community Organization, Inc. (GRACO), P.O. Box 15633, Jersey City, NJ 07305.

Natural Resources Defense Council (NRDC), 40 West 20th Street, New York, NY 10011.

2. The substance or nature of the rulemaking which is requested:

ICO, GRACO, and NRDC petition NJDEP to amend Appendix 1, Table 1B, of N.J.A.C 7:26D (Non-Residential Direct Contact Health Based Criteria and Soil Remediation Standards) to include the Ingestion-Dermal Health Based Criterion of 6 mg/kg for the contaminant hexavalent chromium (CAS No. 18540-29-9).

ICO, GRACO, and NRDC petition NJDEP to amend Appendix 1, Table 1B, of N.J.A.C 7:26D to include a “practical quantitation level” or “PQL” for the contaminant hexavalent chromium (CAS No. 18540-29-9) based upon USEPA Method 6800: “ELEMENTAL AND SPECIATED ISOTOPE DILUTION MASS SPECTROMETRY” from USEPA’s Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, also known as SW-846.

ICO, GRACO, and NRDC petition NJDEP to amend Appendix 1, Table 1B, of N.J.A.C 7:26D to include the Non-Residential Direct Contact Soil Remediation Standard of 6 mg/kg for the contaminant hexavalent chromium (CAS No. 18540-29-9).

3. The reasons for the request:

Hudson County suffers from a legacy of widespread chromium contamination from toxic waste and byproducts of the former large-scale production of hexavalent chromium chemicals by industry in Jersey City and Kearny. NJDEP has no health-based remediation standards for hexavalent chromium in soil and currently relies on insufficiently protective, inefficient, and inconsistent site-by-site determinations based on outdated scientific information. NJDEP has obtained updated and definitive scientific information to develop and implement a protective human health-based chromium soil remediation standard. A recent study by the New Jersey Department of Health and Senior Services showing increased cancer incidences in the vicinity of chromium-contaminated sites demonstrates the urgent need to implement a human health-based chromium soil remediation standard as soon as possible.

4. The petitioners’ interest in the request, including any relevant organization affiliation or economic interest:

ICO was founded in 1987 as a vehicle through which diverse residents of Hudson County could identify common concerns and interests, and act on those concerns in order to

improve the lives of people in their communities. Its members are institutions – religious congregations in Jersey City and Hoboken – and individual residents of the County. Since 1989, ICO has worked to fully understand and responsibly address the legacy of chromate chemical pollution in Hudson County. It has advocated cleanups, health studies, and other measures needed to protect residents and workers from harm and to safely redevelop contaminated areas of the county. ICO is an affiliate of the Metro Industrial Areas Foundation.

GRACO is a community organization made up of residents of several streets in Jersey City: Garfield Ave., Arlington Ave., Randolph Ave., Claremont Ave., Carteret Ave., Clerk St. and Ocean Ave. The organization works to make the neighborhood cleaner, safer, and more attractive, and provides information to create awareness among residents on issues of common concern. GRACO's neighborhood is a densely populated area that includes several known chromium-contaminated sites, including the former PPG Industries chromate chemical manufacturing complex.

NRDC is a national, not-for-profit environmental advocacy organization founded in 1970, with over 520 individual members residing in Hudson County, including over 180 in Jersey City. NRDC's staff of scientists, lawyers, and environmental specialists is dedicated to protecting public health and the environment through litigation, lobbying, and public education. NRDC has long been active in working to reduce the harmful threats to human health and the environment from toxic chemicals, specifically including chromium.

5. The statutory authority under which the Department of Environmental Protection may take the requested action:

N.J.S.A. 13:1D-1 et seq., 58:10-23.11a et seq., 58:10A-1 et seq., and 58:10B-1 et seq.

6. Existing Federal or State statutes and rules which the petitioners believe may be pertinent to the request:

1. The Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 et seq.;
2. The New Jersey Underground Storage of Hazardous Substances Act (UST), N.J.S.A. 58:10A-21 et seq.;
3. The Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq.;
4. The Solid Waste Management Act, N.J.S.A. 13:E-1 et seq.;
5. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.;
6. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.;
7. The Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq.;

8. The Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq;
9. The Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq.

Thank you for your consideration of this urgent petition. We look forward to working with you to protect the health of the people of Hudson County.

Sincerely,

Joe Morris
Director, Chromium Cleanup Project
Interfaith Community Organization

Rev. Dr. Willard Ashley
Co-chairperson
Interfaith Community Organization

Felicia Collis
President
GRACO Community Organization

Teresa Patterson
Vice-President
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Nancy S. Marks
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